REMARKS

Claim objections, and claim rejections under 35 USC 112

Claim 14 has been objected to because in line 5, "on respective one" should be "on a respective one," and in line 10, "ot" should be "to". Both of these corrections have been made by this amendment.

Claim 19 has been objected to because in line 3, "K program" should be "N program." This correction has been made by this amendment.

Claims 1, 2, and 8 have been rejected under 35 USC 112, second paragraph, as being indefinite, because the limitation "a program control device responsive to signals in which commands are sent for ordering startup" is unclear. In particular, the Examiner states that it is not known whether the control device gets signals which cause it to send commands for ordering startup, or if the control device receives signals that have commands that cause the control device to startup. The latter is what was intended to be claimed. Therefore, claims 1, 2, and 8 have been amended to recite "a program control device responsive to signals, the signals including commands for ordering . . . ." Thus, the signals include the commands for ordering, and the control device receives these signals.

Claims 1, 2, and 8 have also been rejected because the limitation "based on" is unclear. In particular, the Examiner states that it is not known whether the managed application is "based on", if the program control device is "based on", if the signals are "based on", or if the commands are "based on". The latter is what was intended to be claimed. Therefore, claims 1, 2, and 8 have been amended so to recite "the commands based on."

Claim 14 has been rejected because the limitation "agents residing on a respective *on* of the N hosts" is unclear. The letter "e" in the word "one" was not inserted as it should have been. Thus, Applicant has amended claim 14 to read "agents residing on a respective *one* of the N hosts," and trusts that this limitation is now clear.

Claim rejections under 35 USC 102

All of the pending claims 1-48 have been rejected under 35 USC 102(a) as being anticipated by Boukobza (6,122,664). Of these claims, claims 1, 2, 8, 14, 36, and 39 are independent claims, from which the remaining pending claims ultimately depend. Applicant contends that, as amended, the independent claims are patentable over Boukobza, and the dependent claims are patentable for at least the same reasons.

Applicant particularly discusses claim 2 as representative of all of the independent claims insofar as patentability over Boukobza is concerned. Specifically, claim 2 is limited to commands being sent that order startup, shutdown, *AND MOVING* of a copy of a managed characteristic application, such as from one host to another. That is, in addition to the commands that order startup and shutdown, there are also commands that order moving of a copy of a managed characteristic application from one host to another. It is at least this limitation – the moving of a copy of a managed characteristic application – that Applicant contends renders the claimed invention patentable over Boukobza.

The Examiner relies upon column 4, lines 35-40, column 5, lines 1-20, and column 5, line 60 through column 6, line 30, of Boukobza as teaching the startup and shutdown of a copy of a managed characteristic application. However, these excerpts of Boukobza do not teach, disclose, or otherwise suggest the *MOVING* of a copy of the application, such as from one host to another. For example, column 5, lines 8-10, of Boukobza state that "[t]he starting and stopping of the monitoring process are controlled by the management node." Similarly, column 6, lines 15-20 of Boukobza state that "[t]he configuration cannot be modified during a monitoring, and for this reason it is necessary to stop the monitoring first in order to modify the configuration and then to restart the monitoring in all of the agents."

Therefore, Boukobza does not teach or disclose the moving of a copy of a managed characteristic application, while the claimed invention is limited to including commands that order such moving. As a result, Boukobza cannot be said to anticipate the claimed invention.

In addition, Boukobza cannot be properly modified to render the claimed invention obvious under 35 USC 103. In particular, there is no motivation to modify Boukobza to include commands that order the moving of a copy of the managed characteristic application, as is now discussed.

There already is in Boukobza "an autonomous agent . . . installed in each node to be monitored." (Col. 2, ll. 23-26) If each node already has an agent to monitor it, however, then moving one of the agents from a first node to a second node means that the first node would no longer be monitored (because it no longer has an agent), and the second node would have two agents to monitor it, for no reason. That is, because an agent is already installed in each node of Boukobza, to move an agent from one node to another represents an improper modification of Boukobza for at least two reasons. First, Boukobza effectively teaches away from this modification because there is no need to move agents among nodes when all the nodes already have agents. Second, such a modification would render Boukobza unsatisfactory for its intended purposes – the monitoring of nodes cannot be accomplished in Boukobza if there is not an agent on each node. "The proposed modification cannot render the prior art unsatisfactory for its intended purpose." (MPEP, sec. 2143.01)

Furthermore, the agents of Boukobza are particular to the nodes on which they are running, such that they cannot be considered movable from one node to another. Each node in Boukobza to be monitored "has its own files . . . of parameters, conditions, and associated actions which allow it to control its own monitoring." (Col. 5, ll. 1-5) A given agent "is specific to an object type or to a particular domain." (Col. 5, ll. 16-20) Thus, moving an agent from one node to another means that the agent, upon being moved from a first node to a second node, may no longer be functional or operable on the second node, even though it was functional or operable on the first node.

Therefore, because an agent is particular to its node in Boukobza, to move an agent from one node to another similarly represents an improper modification of Boukobza for at least two reasons. First, Boukobza effectively teaches away from this modification because there is no

need to move an agent from one node to another node where doing so renders the agent inoperable or nonfunctional. Second, such a modification changes the principle of operation of Boukobza, since Boukobza operates on the principle that each agent is particular to a given node, and if the agent is to be operable and functional for another node to which it is moved, then Boukobza's principle of operation has to be correspondingly modified. "The proposed modification cannot change the principle of operation of a reference." (MPEP sec. 2143.01)

Finally, there is just no reason to modify Boukobza to enable its agents to be able to be moved from one node to another node. Boukobza operates for its intended purpose – the monitoring of nodes of a system – by having each node have its own agent. The added expense and time to modify Boukobza so that an agent could move from one node to another is simply unnecessary. "The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination." (MPEP sec. 2143.01) For at least all of these reasons, then, there is no motivation to modify Boukobza to yield the claimed invention, in which there are commands order the moving of a copy of an application, such as from one host to another host.

Further note regarding filing date of present patent application

Applicant had noted in the previous office action response that the filing date of the present patent application is listed incorrectly. The present patent application was filed on May 24, 2001, and a preliminary amendment adding claims 2-48 was filed on September 19, 2001. However, the patent application is incorrectly listed as having been filed on the date the preliminary amendment was filed, or September 19, 2001. Therefore, Applicant had request that the filing date be updated to appropriately reflect that the patent application was filed on May 24, 2001, and not on September 19, 2001, when the preliminary amendment was filed.

In the final office action, the Examiner noted that the signed oath and declaration was not filed until September 19, 2001, and this is why the filing date was changed to September 19, 2001 until May 24, 2001. However, the filing date is accorded on the date a patent application is

filed, regardless of when the "missing parts" – such as the signed oath and declaration and the filing fee – are filed. Therefore, the filing date should still be May 24, 2001, and not September 19, 2001, when the signed oath and declaration was filed. Applicant is filing a separate request for correction of the filing date.

Conclusion

Applicant has made a diligent effort to place the pending claims in condition for allowance, and request that they so be allowed. However, should there remain unresolved issues that require adverse action, it is respectfully requested that the Examiner telephone Scott Boalick, Applicant's Attorney, at 540-653-8061, so that such issues may be resolved as expeditiously as possible. For these reasons, this application is now considered to be in condition for allowance and such action is earnestly solicited. Please apply any charges or credits to deposit account 50-0967.

Respectfully Submitted,

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Date

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